

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LESTER JOE MUNN,

Plaintiff,

v.

SANDRA CLARK, ET AL.,

Defendant.

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CIVIL ACTION NO. 5:23-CV-72-RWS-JBB

ORDER

Before the Court is Plaintiff Lester Munn's complaint and motion to proceed *in forma pauperis*. Docket Nos. 1, 2. Plaintiff filed the above-captioned action complaining of alleged violations of his constitutional rights. *Id.* The case was referred to United States Magistrate Judge Boone Baxter in accordance with 28 U.S.C. § 636. The Magistrate Judge issued a Report recommending that Plaintiff's complaint be dismissed as barred by the statute of limitations. Docket No. 5. The Magistrate Judge also recommended that Plaintiff is barred from proceeding *in forma pauperis* because Plaintiff has filed at least three lawsuits or appeals which were dismissed as frivolous and Plaintiff has not alleged that he is in imminent danger of physical injury. *Id.*

Plaintiff complained of an incident that occurred on August 29, 2019. Docket No. 1 at 4. Specifically, Plaintiff complained he was subjected to excessive force by Defendants Clark and Sisson. *Id.* The Magistrate Judge noted that this incident appeared to be the same as the basis for another lawsuit filed by Plaintiff. *Id.* The Magistrate Judge also noted that Plaintiff filed his complaint on July 5, 2023, over three years after the complained incident. *Id.* The applicable statute of limitations for this cause of action is two years. *Id.* (first citing TEX. CIV. PRAC. & REM. CODE § 16.003(a); then citing *Pete v. Metcalfe*, 8 F.3d 214, 217 (5th Cir. 1993)). Accordingly, the

Magistrate Judge recommended that Plaintiff's lawsuit is barred by the statute of limitations because Plaintiff failed to demonstrate any basis for equitable tolling or commencing the limitation period on a day other than when the complained incident occurred. *Id.* at 2.

The Magistrate Judge also observed that Plaintiff has filed at least three lawsuits which have been dismissed as frivolous or for failure to state a claim. *Id.* The Magistrate Judge noted that Plaintiff has not demonstrated he is in imminent danger, and therefore recommended that Plaintiff is barred from proceeding *in forma pauperis* pursuant to 28 U.S.C. §1915(g). *Id.* at 2–3.

Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 5) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned action is **DISMISSED** with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit upon payment of the full \$402.00 filing fee or a

showing that Plaintiff is in imminent danger of serious physical injury related to the basis of the complaint. It is further

ORDERED that any pending motions are **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 31st day of October, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE